

This letter describes the standard drop-shipment scenario and certificates of resale. *See* 86 Ill. Adm. Code 130.225. (This is a GIL.) See 86 Ill. Adm. Code. (This is a GIL.)

August 23, 2013

Dear Xxxxx:

This letter is in response to your letter dated March 4, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a General Information Letter on the sales tax ramifications of a drop shipment transaction.

In this situation, the taxpayer is an Illinois based company that manufactures equipment. The taxpayer sells its equipment through a network of independent distributors around the country. The distributors, in turn, sell the equipment to their customers (the “end-user”). The taxpayer is not related to the distributors by common ownership.

At times, an out-of-state distributor who does not have nexus with Illinois and does not have an Illinois resale certificate will enter into a drop shipment arrangement, where the out-of-state distributor will sell equipment to an end-user in Illinois. In such a drop shipment situation, the taxpayer will treat this as a sale directly to the out-of-state distributor, but will deliver the equipment to the Illinois end-user. The out-of-state distributor will issue its resale certificate issued by the state where the out-of-state distributor is based.

The taxpayer will treat this as drop shipment pursuant to Illinois Administrative Code Section 130.225, where it will be classified as a [sic] two transactions: (i) a sale from the taxpayer to the out-of-state distributor without an Illinois sales tax resale number; and (ii) a second sale from the out-state distributor to the Illinois end user. Pursuant to this rule, the taxpayer does not collect sales tax from the out-of-state distributor on the drop shipment to the Illinois end-user.

On occasion, the Illinois end-user has requested that rather than having the equipment shipped to the Illinois end-user by a common carrier, that the Illinois end-user would prefer to pick up the

equipment from the taxpayer's manufacturing facility with the end-user's own truck, rather than shipping the equipment to the end-user by a common carrier.

We are asking if the taxpayer would be required to collect Illinois sales and use tax on a drop shipment transaction where the Illinois end-user picks up the equipment using its own truck, rather than delivering the equipment by way of a common carrier to the Illinois end-user.

If you need any additional information, please contact me either by phone, mail or e-mail.

DEPARTMENT'S RESPONSE:

The Department's regulations regarding Drop Shipments can be found at 86 Ill. Adm. Code 130.225 and Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale at 86 Ill. Adm. Code 130.1405. A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. *See* 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) the seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) the purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and
- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

If Purchaser has no nexus with Illinois, it is unlikely that Purchaser would be registered with Illinois. If that is the case, and if Purchaser has no contact with Illinois which would require it to be registered as out-of-State Use Tax collector for Illinois, then Purchaser could obtain a resale number which would provide it the ability to supply the required number to Company in conjunction with a Certificate of Resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the ability to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Purchaser does not act as an Illinois retailer (*see* 86 Ill. Adm. Code 130.605(a)), and so long as it does not fall under the definition of a "retailer maintaining a place of business in this State" (*see* 86 Ill. Adm. Code 150.801(c)), its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability, and it cannot be required to act as a Use Tax collector. So long as this is true, Purchaser qualifies for a resale number that does not require the filing of tax returns with the Illinois Department of Revenue. *See* 86 Ill. Adm. Code 130.1415. The fact that Purchaser may not be required to act as a Use Tax collector for Illinois does not relieve Customer of Use Tax liability. Therefore, if Purchaser does not collect Illinois Use Tax from Customer, Customer would have to pay its tax liability directly to the Illinois Department of Revenue.

Resale numbers on Certificates of Resale is still the preferred method. However, the Illinois Retailers' Occupation Tax Act leaves open the possibility of other options to document the resale nature of the sale:

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. 35 ILCS 120/2c.

Once again, including a registration or a resale number from Purchaser on a Certificate of Resale is the preferred method for documenting that the purchase from Company is a purchase for resale. However, in light of this statutory language, a certification from Purchaser on a Certificate of Resale in lieu of a resale number which described the drop-shipment situation and the fact that Purchaser has no contact with Illinois which would require it to be registered and that it chooses not to obtain an Illinois resale number would constitute evidence that this particular sale is a sale for resale, despite the fact that no registration number or resale number is provided. The risk run by Company in accepting such a certification, and the risk run by Purchaser in providing such a certification, is that an Illinois auditor may be more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Company as evidence that the particular sale was, in fact, a sale for resale.

Assuming the manufacturer has received adequate documentation from the Purchaser, the Department will consider the transaction to be a purchase for resale and will not require the manufacturer to collect tax from the Customer, even if the customer picks up the equipment from the manufacturer.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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